
A MANAGER'S GUIDE TO PREVENTING SEXUAL HARASSMENT



with
Lynda Ford

June 19, 1–3 pm ET

Welcome!

Three elements are critical in promoting an environment that is free from sexual harassment, and all are within management control:

- Understanding the actions and behaviors that contribute to sexual harassment.
- Taking proactive preventive measures.
- Responding immediately to remedy issues of harassment.

In this program, Lynda Ford will guide you through the sexual harassment maze, and provide concrete guidance and strategies for maintaining a workplace that is free from sexual and other types of harassment.

What You Will Learn

By attending this seminar, you will learn¹

- ✓ What types of conduct constitute harassment.
- ✓ What is expected of you as a supervisor or manager.
- ✓ Factors that increase or decrease the likelihood of complaints.
- ✓ The impact of sexual harassment on an organization.
- ✓ How to reduce liability and the likelihood of a complaint.
- ✓ What to do if an employee brings a complaint to you.
- ✓ The biggest mistake supervisors make in the area of sexual harassment, and how to prevent it.

¹All references in this handout and program are for illustrative purposes only, as the subject matter we are covering could be considered sensitive. It is in no way meant to offend any person, group, or organization. Its sole purpose is to teach, educate, and form the foundation for a workplace environment free from all types of harassment.

Program Outline

Welcome by our moderator, Jane Gardner

Presentation

- Harassment...or Not?
- What Is Harassment?
- Frequency and Severity
- Sexual Harassment Or Friendly Behavior?
- Hostile Work Environment
- Other Types of Harassment
- Quid Pro Quo

Question and answer session (10 minutes)

Presentation

- Why Do We Need to Talk About It?
- What Does It Cost?
- Your Role
- Perceptions and Backgrounds
- Handling Complaints
- What's Your Move?

Question and answer session (10 minutes)

Wrap-up

How to Get the Most from the Seminar

Before the seminar...

- Become familiar with your organization's policy on preventing all types of harassment in the workplace.
- Understand your organization's expectations.
- Understand how investigations are done at your workplace and what your role is in those investigations.

During the seminar...

- Take notes and ask questions.
- Think about how the information applies to your specific work environment.
- Keep an open mind. Understand that the law and current work environment requires us to handle situations in ways that may be contrary to how you think it should be handled.

After the seminar...

- A variety of resources are available for preventing harassment in the workplace. A good place to start is with the Society for Human Resource Management (www.shrm.org), the US Equal Employment Opportunity Commission (www.eeoc.gov), or your organization's employment-law attorney.
- The Ford Group's website (www.fordgroup.com) also has several articles and e-learning courses on harassment. Feel free to e-mail questions to Lynda Ford at lynda@fordgroup.com.

Presentation

HARASSMENT...OR NOT?

Scenario 1

Joanne was enjoying her new job. The people she worked with were friendly and regularly went out for happy hour Friday after work. Sometimes, though, Joanne thought they were a little too friendly at work. It was not unusual to find Matt and Jenny stealing kisses and romantic touches when they thought no one was looking. Frankly, Joanne felt uncomfortable every time she turned the corner to use the restroom or the copier.

Is this harassment...or not?

- ☐ Yes
- ☐ No
- ☐ Not sure

Scenario 2

Roger was a front-line supervisor with responsibility for approximately 20 employees. The second Tuesday of each month he held a staff meeting to help promote communication among all his people. It was a young group (none over 28) and to Roger, who was 61, they seemed to speak their own language. Lately, though, he had noticed that off-color jokes were being told and that certain people, both male and female, had a tendency to take comments and put their own special "twist" on them. It might be sexual innuendo or a spin on someone's ethnic background. Roger wasn't sure if this was a problem or just the generation gap. After all, both the men and women freely participated in the banter.

Is this harassment...or not?

- ☐ Yes
- ☐ No
- ☐ Not sure

Scenario 3

Upon arriving for work, George almost walked right into Jean. Jean had been at the company for 10 years and was most definitely a sore spot for George. Her sweaters and jeans were so tight that George could barely keep his mind on his work. What was even worse was that every time Jean had a question, she would walk over to George and (deliberately, he thought) lean over, and give him a bird's-eye view. George thought, "This must be harassment!" but who would believe it if a man complained about something like this!

Is this harassment...or not?

- ☐ Yes
- ☐ No
- ☐ Not sure

Scenario 4

Gina had worked several years at Bizco Boxes. She was good at her job and enjoyed the work. Her only problem was her boss, who asked her out on dates, made thinly-veiled passes, and made comments such as, "Are you wearing shorter skirts, yet, because it would make your job a whole lot easier." Gina didn't consent to going on a date with him, nor did she wear shorter skirts. She didn't suffer any retaliation from her boss or the company, received a pay raise, and even received a promotion!

Is this harassment...or not?

- ☐ Yes
- ☐ No
- ☐ Not sure

Scenario 5

Every morning Maria, Kate, and Fran would gather in the break area before work started for a cup of coffee. Usually the talk would focus on weekend plans, families, and what they were doing at work. Maria was especially excited about her trip to her native land, Puerto Rico, as her mother and father still lived there. Often, the women would bring catalogues they received in the mail to exchange. Maria had recently brought in the Victoria's Secret catalogue. It ended up being passed around the entire office, and somehow it landed up on Jim's desk, who then brought it back to Maria and pointed out which outfits he thought she should purchase, adding "that she was a hot Spanish chick." This made Maria a little uncomfortable, but what could she say? She was the one who brought in the catalogue.

Is this harassment...or not?

- ☐ Yes
- ☐ No
- ☐ Not sure

Scenario 6

Burt was an extremely competent programmer and really had a knack for taking young, new employees under his wing and showing them the ropes. He took great pride in this, and most people agreed it was in part a result of his great communication skills. Although his co-workers agreed that he did have a talent for training the new people on the job, his often-too-focused eyes, his tendency to put his hand on a shoulder, and his generally moving too close made many of his co-workers uncomfortable. Bob and Jill in particular had a problem with this, and both had recently been looking to transfer to different jobs.

Is this harassment...or not?

- ☐ Yes
- ☐ No
- ☐ Not sure

WHAT IS HARASSMENT?

Definition:

The *American Heritage Dictionary* (2002) defines harassment as, “to trouble persistently or incessantly.” Harassment in the workplace also has an element called “unwelcome behavior.”

In fact, the Equal Employment Opportunity Commission (EEOC), has defined sexual harassment in its guidelines as, “unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or,
- Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual; or,
- Such conduct has the purpose or effect of unreasonably interfering with such individual's work performance or creating an intimidating, hostile, or offensive working environment.”

“Unwelcome” is the critical word.

Unwelcome does not mean involuntary.

If a victim *thinks they were coerced* into participating, it is considered harassment, even if it *seems* as if he or she is in agreement or has given consent to participating in such conduct. Often times, victims will not say “no” for fear that it may lead to negative repercussions or reprisals regarding their employment.

Title VII of the Civil Rights Act of 1964 (and as amended in 1991) prohibits discrimination or harassment of employees based on race, color, religion, sex, pregnancy, age, disability, or national origin. In some jurisdictions, other characteristics are protected, such as sexual orientation. The law does not allow employers to take into consideration these characteristics when making employment-related decisions including, but not limited to, hiring, firing, promotions, training, or pay. In addition, employers may not retaliate against employees who have claimed discrimination in good faith.

Sexual harassment is a violation of Title VII.

Therefore, sexual and other types of harassing conduct are unwelcome whenever the person subjected to it considers it unwelcome.

FREQUENCY AND SEVERITY

Frequency and severity also play a part in determining whether actions would be considered harassment.

By *frequency*, we mean how often the behavior occurs.

By *severity*, we mean how unreasonable the action was.

For example, putting your hand on someone's shoulder once might not be considered frequent or severe enough to be harassment.

However, repeatedly putting your hand on someone's shoulder may meet the frequency definition. And if you put your hand on someone's shoulders just once, but started massaging their shoulders, that just might be severe enough to be considered harassment, even if it happened only once.

SEXUAL HARASSMENT OR FRIENDLY BEHAVIOR?

Just what distinguishes sexual harassment from a friendly comment? While a single comment or incident might not be sexual harassment, a pattern of this type of behavior probably would be. The critical element is whether the behavior is perceived as *unwelcome* by another person.

In this case the “Reasonable Person Standard” (previously known as the “Reasonable Woman Standard”²) has emerged as the benchmark for evaluating this perception. Because different individuals have different sensitivities, conduct that is not offensive to one person may be to another person. For that reason, some courts apply the “Reasonable Person Standard.” This says, “Would the alleged conduct be offensive to a person of average sensitivities?”

A good rule of thumb is to ask yourself, “Would your behavior change if a member of your family were in the room? Would you want your mother, sister, wife, etc. treated or spoken to in this manner? Would your behavior change if a male member of your family—such as your husband, father, or brother—were in the room? Would you want your male family members to be spoken to or treated in this manner?”

While this points to sexual harassment, this rule of thumb is appropriate when considering all types of harassment.

²The Supreme Court ruled in *Oncale v. Sundowner Offshore Services, Inc.* (U.S. Sup. Ct., No. 96-568, 1998) that same-sex sexual harassment can exist under Title VII of the Civil Rights Act.

HOSTILE WORK ENVIRONMENT

A hostile work environment occurs when workplace conduct unreasonably interferes with an employee's work performance or creates an intimidating work environment.

Conduct constituting environmental harassment can come from supervisors, fellow employees, visitors to the workplace, customers, or suppliers.

Some of the factors that can contribute to a hostile work environment are (but are not limited to)

- Commentary about an individual's body (or body parts).
- Sexual or other (race, religion, gender, etc.) degrading words to describe an individual.
- Sexual and other offensive comments.
- Sexually suggestive language.
- Jokes that are suggestive, off-color, or otherwise offensive or targeted to a specific group.
- Innuendoes.
- Sexual or other suggestive objects, such as pictures, written or electronic information found in
 - ❑ Books
 - ❑ Magazines
 - ❑ Computer software
 - ❑ Photographs
 - ❑ Cartoons
 - ❑ Pictures
 - ❑ Calendars
 - ❑ Postcards.

QUID PRO QUO

Quid pro quo (“Something for something,” or “This for that”) sexual harassment involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Quid pro quo exists when

- Submission to such conduct is made, *either explicitly or implicitly*, a term or condition of an employee’s employment.
- Submission to or rejection of such conduct by an employee is used as the basis for employment decisions affecting the employee.

Therefore, the factors to consider when deciding if an employee has been subjected to quid pro quo harassment include whether the harasser had actual supervisory authority over the employee, the harasser demanded sexual favors in exchange for an employment-related benefit, and the employee suffered some job detriment as a result.

WHY DO WE NEED TO TALK ABOUT IT?

In Terms of the Work Environment:

- Morale
- Productivity
- Profits
- Retaining trained employees

In Terms of the Outside Environment:

- Positive perception in the community
- “Good citizen”
- Profits
- Recruiting the best

WHAT DOES IT COST?

While many of the costs of sexual and other types of harassment cases can be measured, such as the costs of litigation, there are many that cannot. And whether or not the case goes to court, there are still attorney fees, salaries, and other investigation expenses that must be paid out.

Add to that what it costs to run a workplace that has poor morale (decreased productivity, increased absenteeism, decreased creativity and innovation) and you can see that the numbers add up substantially. We hear of cases that can cost in the millions. Here's a sample:

- An initial judgment against Wal-Mart (*Kimzey v. Wal-Mart Stores, Inc.*) of \$50 million was reduced to \$5 million, plus attorney and court costs, because the company failed to take action when an employee reported the sexually harassing actions of a supervisor.
- In a case against IBM, a marketing representative claimed that two supervisors pressured her into a sexual relationship with a supplier. The jury did not find the supervisors harassed the employee, yet did find that the employee had been harassed by IBM. (They are very puzzled by the verdict.) Estimated cost: \$65,000 award to the employee plus more than \$2 million in fees.
- Del Laboratories agreed to pay \$1.185 million to 15 women who accused the chairman of a variety of inappropriate sexually harassing actions, including the allegation that he forced them to sign documents saying the harassment never occurred.
- In *Graves v. Circuit City Stores*, the court held that, because the company took quick and appropriate action on a complaint, the company would not be liable under Tennessee Human Rights Act. Appropriate action shielded the company from a negative decision. However, it did not shield them from the costs associated with such a claim.

- In *EEOC v. HBE Corp.*, two former employees of Adam's Mark Hotel were awarded almost \$5 million in a race discrimination case. A black employee claimed that he was fired when he protested the hotel's policy against promoting blacks to upper management positions. The white personnel director claimed that he was also fired for protesting the policy. The personnel director went on to say that he was told to fire the black employee because the hotel did not want blacks in upper management.
- A 63-year-old former Schering-Plough salesman was awarded \$8.4 million in an age discrimination suit in New Jersey. He had worked for S-P for 35 years. One reason that might have accounted for the large award in *Maiorino v. Schering-Plough* was that Maiorino was fired in public at a diner. One S-P executive claimed that the company often fired people in public places.

If the company must deal with a harassment complaint, a dollar cost is attached. It doesn't matter if the case makes it to court. It doesn't matter if you're found innocent or guilty. A cost is still associated with handling a complaint—and to be sure, it's substantial. The best strategy is to promote a work environment free of all types of harassment—whether it's quid pro quo or a hostile work environment.

YOUR ROLE

As a supervisor or manager, you have an obligation to

- Promote an environment free of all types of harassment.
- Take appropriate measures to stop harassing behaviors.
- Provide employees with guidelines of what is acceptable and unacceptable behaviors, according to your company policy.
- Comply with your organization's stated policy.
- Provide answers to employee questions (or find out if you don't know).
- Lead by example. Be mindful of what you say and do.
- Keep written records of any incidences (document, document, document).
- Inform the Human Resources Department or a "central person" of all information and actions associated with a harassment issue.

PERCEPTIONS AND BACKGROUNDS

Yes, perception is reality, and how the people that work for you see the work environment through their *perceptions, attitudes, and paradigms* makes a difference in how you plan and respond.

Employees come to work for your company with a variety of social and ethnic backgrounds, family upbringing, and religious affiliations. Their world colors what they see, say, and do, and how they interpret what you say and do.

We work in a diverse organization, with many different cultures. What is culture?

- Culture is the way that individuals experience their social environment.
- Culture reflects the way people give priorities to goals, behave in different situations, and see the connections between their behavior and different outcomes.
- Culture includes the individual's perception of rules, norms and values.

Provide a better working environment based on

- Clearer understanding of personalities.
- Clearer understanding of perceptions.
- Systems established on mutual respect, on give and take.

As supervisors, you may also have your own set of perceptions, attitudes, and behaviors as to what constitutes acceptable and unacceptable behaviors. It is important that supervisors consider what an employee might consider unwelcome. It is equally important to consider that sexual and other types of harassment are against the law (in the United States), and all employees have an obligation to comply with the law.

HANDLING COMPLAINTS

Most importantly, you should always comply with your organization's stated policy, which has already been distributed to you. When a harassment complaint is made, an investigation should start immediately. There may be times when it is necessary for you to participate in some part of the investigation.

If an employee comes to you with a sexual harassment complaint, immediately notify the Human Resources Department or designated person. It should also be understood that supervisors may not, under any circumstances, retaliate against an employee for filing a complaint. This is applicable, but not limited, to all actions relating to promotions, salary increases, lay-off and downsizing decisions, demotions, and transfers.

If an employee comes to you with a complaint:

1. The first and most important step in handling allegations of sexual and other types of harassment is to take *all complaints seriously*.

Taking a complaint seriously means listening attentively to the employee, taking notes as needed, and assuring the employee that his or her complaint will be investigated. It also means assuring the employee that you will try to keep the investigation of his or her complaint as confidential as possible. However, do not promise confidentiality to the victim. Also, assure the employee that you will meet with him or her at the conclusion of the investigation.

Employees often take outside legal action because they feel that their employer has not taken their concern seriously. Do not fall into this trap.

2. If you are called in to assist with an investigation, please note the following. At the beginning of each interview, let the interviewee know that the proceedings of the investigation are absolutely confidential and may not be discussed by the employee with anyone! It is critical that during the investigation, you remain impartial and nonjudgmental with all parties involved.

Make sure the complainant knows that you appreciate that he or she brought this to your attention, and that you know this is a difficult thing to do. Find out what they are looking for in terms of resolution. Be empathetic, but do not take sides!

3. *General investigation procedures:* In most cases the person making the complaint is interviewed first. The next person to be interviewed can be either the alleged harasser or eyewitnesses. During the interviews, detailed and specific information should be gathered. This includes dates, times, what happened, where it happened, what was said, and any other pertinent information.

4. The information obtained in the investigation is then evaluated, and a decision is made how to proceed. Whatever course of action is undertaken, the investigation results should be used as an opportunity to reduce future risks.

5. Last, always follow up with the complainant to communicate the results of the investigation.

WHAT'S YOUR MOVE?*Scenario 1*

Two employees you supervise have just confronted you, saying that you have been sexually harassing them. They cite putting your arm around them, making suggestive comments about their physical appearance, and interrupting their work with dirty jokes or risqué cartoons. You're shocked by their accusation. Your intent was benign. You just wanted to have a little fun at work. Sexual harassment never entered your mind. You should...

Scenario 2

The women in the department were clearly delighted when Jared was hired. He was the first and only man to join the support staff, and he was young and quite good looking. Jackie and Rita began to hang around his desk and tease him. They asked a lot of questions about his personal life and wanted to know if he had a girlfriend. Jared didn't know what to do. The women's behavior was embarrassing, and he was having trouble concentrating on his job. He finally asked his supervisor, Bernice, for help in getting the behavior to stop. Much to his dismay, Bernice simply laughed and said he should get used to this kind of behavior in an office full of women. What should Jared do?

Scenario 3

Joyce and Rob have worked for the company for several years. The quality of their work is exceptional, and you know that you can count on them to get the job done right. Both Joyce and Rob are black. Recently, they came to you quite upset that another employee had used the “N” word at work. You asked if it had been directed at them and they said no, but nonetheless they didn’t like the other employee using that language. You talk to the alleged offending employee, who admits to using the word, but goes on to tell you that Joyce and Rob were overheard talking with some peers in the parking lot, and freely using the same word. What do you do?

Scenario 4

Chrissy is known as “one of the boys.” She wears unkempt jeans and t-shirts to work, hangs out with the guys, uses obscene language, always has a dirty joke, and posts pictures of barely clad men and women in her work area. You and one of your colleagues, who work for another department but come in contact with Chrissy on a regular basis, find her behavior somewhat offensive. Your best strategy is to...

Scenario 5

For the past six months, whenever Joe walked past Elaine's desk, he winked, patted her on the shoulder, and would tell her the latest joke he had heard. Since Joe and Elaine were of Italian descent, the jokes were aimed at ribbing fun at their heritage. Although Elaine would laugh, she didn't find the jokes or touching very funny. It was particularly upsetting that Joe was her manager. Elaine tried to be businesslike in her interactions and eventually told Joe that his behavior and especially the ethnic jokes made her uncomfortable. At that point, he stopped. Elaine then mentions it to you in passing. Are there any other actions that Elaine needs to take? What would you do?

Scenario 6

For the past two months, one of the employees in your department, Nate, has been making comments to another employee, Jim, who is openly homosexual. The comments are both sexually charged and also use expressions such as "gay boy" and "fag." Jim has repeatedly asked Nate to stop, but without success. When Jim comes to you, he asks for a transfer because of the situation. You offer to look into it, but he adamantly says, "NO," do not, under any circumstances, do anything. He just wants a transfer. How do you as a manager handle this?



About Your Presenter

Lynda Ford, SPHR, has more than 20 years of hands-on and management experience, and is known for her creative and pragmatic approaches to difficult workplace issues. She is president of The Ford Group (www.fordgroup.com), a consulting firm that specializes in strengthening organizations through their greatest potential resource—people. She focuses on recruiting and retention strategies, group, team and individual coaching, facilitation and training, education, and development.

Lynda is a consultant, is in demand as a speaker and author, and has conducted hundreds of harassment programs attended by thousands of people. She has also conducted dozens of harassment investigations. She writes a twice-monthly column on management and employee issues in the *Observer-Dispatch* (a Gannett publication) and is often quoted in other publications, such as *The Wall Street Journal*, *The Washington Post*, *CBS MarketWatch*, *The New York Times*, and *HR Magazine*. Lynda recently published her first book, *FAST52: Building an Exceptional Workplace Environment*.

Question Sheet

Use this form to write your question or for discussion among your colleagues. Please write clearly.

Your name (optional): _____

Your organization: _____

Your location (city, state, country):

Your question (25 words or less):

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